



Attorney Docket No.: 15685.P093

PATENT

PRE-APPEAL BRIEF REQUEST FOR REVIEW
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Christopher Richard Uhlick et al.

Application No: 09/813,386

Filed: March 20, 2001

For: METHOD AND APPARATUS
FOR RESOURCE MANAGEMENT
IN A WIRELESS
COMMUNICATION SYSTEM

) Examiner: Naghmeh Mehrpour

) Art Unit: 2686

Mail Stop AF

Assistant Commissioner For Patents
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In response to the Final Office Action mailed January 12, 2006, and the Advisory Action mailed May 9, 2006, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully request review of the final rejection of the claims of the above-referenced application in view of the following.

Claims 1, 8, and 15 are the independent claims pending in the above-referenced patent application, and are the subject of this Request. The Advisory Action mailed May 9, 2006 (the Advisory Action) maintained the final rejection of these claims under 35 U.S.C. § 102(e) as being anticipated by US Patent Publication No. 2003/0169722 A1 to Petrus et al. (hereinafter "Petrus"), as set forth in the Final Office Action mailed January 12, 2006 (the Final OA). Collectively the Final OA and the Advisory Action may be referred to as the Office Actions.

In the Response After Final filed within two months of the mailing date of the Final Office Action, Applicants point to language in claims 1, 8, and 15 directed to a **session time limit**, and a **session renewal**. Applicants then set forth again the deficiencies in the cited reference, as shown in previous Responses. In reply, the Advisory Action erroneously asserts that Applicants' Response After Final failed to comply with 37 CFR 1.111. Applicants provide below the substance of the Response After Final, which 1) points to specific portions of the claimed invention not disclosed by the cited reference; 2) addresses the application of the cited reference to the independent claims, specifically pointing to the errors in the Office Action and the sections of the cited reference that fail to support the rejection set forth in the Office Action; and, 3) asserts that the specific portions mentioned are not disclosed or suggested by the cited reference.

As stated above, Applicants' claims recite a session time limit, and a session renewal. As Applicants have previously stated, despite the exchange of several Office Action and Responses between the Applicants and the Office, the Office has yet to provide a rejection that addresses each element of the claimed invention. There has been significant expenditure by the Applicants in terms of time and resources, to Applicants' detriment, to prosecute the above-referenced application, with no apparent progress being made as to its final resolution. The Office continues to cite references that fail to provide support or suggest certain elements of the claimed invention.

Applicants maintain that the Office Actions have failed to set forth a *prima facie* case of anticipation under MPEP § 2131 at least for failing to provide a rejection that addresses every element of the claimed invention. The cited reference fails to support an anticipation rejection of the claims at least because it fails to set forth at least one element of the invention as recited in the independent claims. Applicants' independent claims 1, 8, and 15 recite a session time limit, and a session renewal, which is not disclosed or suggested by the cited reference.

More particularly, the Final Office Action asserts at page 2, and more specifically at pages 5 to 6, that Petrus discloses the claimed invention. This assertion is not supported by the cited reference. The Final Office Action bases the rejection on paragraph [0039] of Petrus, which states the following:

Periodically, **the user terminal scans** the BCH to update its RSSI and BSCC map. When it detects a better base station, **it** may send a CR to this new base station and possibly handover its network session. If successful stream initiation fails too many times, the user terminal enters a timeout state. From timeout, it may try to regain a RID via RA-rreq, refresh its timing advance using a CR, find a new base station to which it might handover by scanning the BCH, or even begin from scratch to re-acquire basic frame timing. If this re-establishment is successful, the user terminal may be able to continue its network session by completing a network session handover to the new base station.

Each portion of this paragraph, and the misapplication of this section to the claimed invention is addressed below, in turn.

The Final Office Action asserts that "When it detects a better base station, it may send a CR to this new base station and possibly handover its network session" discloses detecting a session renewal. Applicants note at least two errors in this reasoning. A first error is that the claimed invention recites "the communication device [that established a wireless communication session **with a remote user terminal**] detecting a session renewal," whereas the cited reference discusses a **user terminal** handing over its network session. Applicants submit that the operators are different in the cited reference and the claimed invention, and the cited reference would not suggest the claimed invention to one of skill in the art. A second error is that there is no disclosure or suggestion in the cited reference of **detecting a session renewal**. The Final Office Action fails to provide reasoning as to why one skilled in the art would purportedly understand that determining to hand over a network session due to **detecting a better base station** would suggest detecting a session renewal. The cited reference fails to disclose that a session will expire due to a time limit. In fact, for example, the cited reference discloses at paragraph [0140] that a session will remain open until it is closed, and the processes described will not delay closing the session (which concept is directly contrary to renewing a session time limit to extend the session, as recited in the claimed invention). The cited reference fails to consider session renewal, and the handover of the cited reference fails to disclose or suggest a session renewal as recited in the claimed invention.

Next the Final Office Action asserts that "From timeout, it [the user terminal] may try to regain a RID via a RA-req, refresh its timing advance using a CR..., or even begin from scratch to re-acquire basic frame timing" discloses altering a first session time limit. Applicants assert that this assertion fails to find support in logic and reasoning. As a person of skill in the art understands, a "timing advance" refers to a round trip propagation delay between the user terminal and the communication device with which it is communicating. "Frame timing" refers to synchronization of communication signals between communicating devices. A "timing advance" has nothing to do with **session time limits**, even though "timing" and "time limit" may appear to have similar roots to the casual observer. Similarly, "frame timing" fails to suggest **session time limits** to one of skill in the art.

Applicants point out that the claimed invention recites session time limits, which are not addressed in cited reference. The cited reference discusses establishing a session at [0037], and continuing a session with handover (as opposed to terminating the former session and beginning a new session) in [0039]; however, Applicants note that these sessions fail to discuss time limits or session renewal, in contrast to what is claimed. Applicants must concede that the cited reference refers to a "timeout," but as with the other portions of the cited reference, it is taken out of context and misapplied in the Office Action to the claimed invention. The timeout relied on by the Office Action refers to a failed initiation of a stream, or failed initiation of a session, and fails to suggest to one of skill in the art a **session timeout**. Applicants assert that if a session fails to initiate, it cannot timeout.

The Final Office Action fails to meet its burden to provide a *prima facie* case of anticipation, as per MPEP § 2131, because the cited reference fails to disclose at least one element of the invention as recited in the independent claims. The assertions in the Office Action fail to find support in the cited reference. As is well established, the dependent claims include every limitation of the independent claims. Because the cited reference fails to disclose at least one element of the independent claims, a *prima facie* case of anticipation has not been

established with reference to the dependent claims. Therefore, the independent claims are not anticipated by the cited reference. The dependent claims are allowable over the cited reference for at least the reasons set forth above with respect to the independent claims.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: May 25, 2006

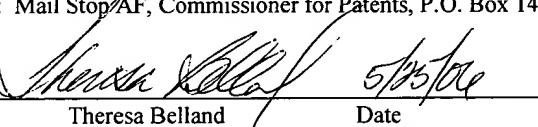


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